EIGHTY-SIXTH CONGRESS

Congress of the United States

House of Representatives

MILITARY OPERATIONS SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OFFICE BUILDING
101 GEORGE WASHINGTON INN
WASHINGTON, D. C.

June 19, 1959

Honorable Steven V. Carter
House of Representatives
Washington 25, D. C.

Dear Colleague:

A member of my subcommittee staff has conveyed to your office informally the results of our inquiry concerning the complaint from Mr. James A. Springer, president of Arctic Pacific, Inc., which you transmitted with documents by letter of June 2, 1959. The documents are returned herewith for your files.

Mr. Springer's allegations are stated and considered under captions below:

Arctic Pacific, Inc. was the original low bidder by a substantial margin.

This is true if the bid offer for the basic 7800 flying hours alone is considered. However, the Government reserved the right to require additional flying hours up to a maximum of 15,000 and requested the bidder to specify prices for optional increments.

On the basis of the total bid prices for the guaranteed plus optional flying hours, Mr. Springer's company was not the low bidder. Air America was initial low bidder by $170,706 for the total bid price.

Mr. Springer takes the position that option prices are not part of the contract. While I believe personally that the inclusion of option prices is not altogether a satisfactory method of bid determination, the Comptroller General has ruled in an analogous case that the procurement agency is warranted in so doing.

The analogous case was one [illegible] to my subcommittee by a Member of Congress who [illegible] that the Military Petroleum [illegible]

aviation fuel storage facility construction and maintenance on the basis of price offers for a 5-year contract period plus three 5-year optional periods, or 20 years altogether.

The complainant had contended that the Government contracting officer should have evaluated the bids for the basic 5-year contract period without regard to the option periods. The complainant was low bidder for the first 5-year period but not low for the 20-year total period.

The case I have cited may not be altogether apposite, since other factors entered the picture, including the interpretation of Congressional intent in Public Law 84-968, paragraph 16, 70 Stat 991, 1018, which authorized long-term contracts for construction and maintenance of fuel storage facilities, with Government options to renew contracts for 5-year periods up to 20 years.

However, the Comptroller General pointed to the fact that all bidders were aware of the option provisions in the bid request, so that they all stood on equal footing in that regard. Since Mr. Springer submitted price offers on the optional flying hours, it may be presumed that he likewise was aware of the situation. In fact, he received a follow-up letter from the contracting officer explaining how the option prices would be figured. As the Comptroller General stated in the fuel storage case:

> If the contracting authority were restricted to a consideration of quotations for a 5-year period, there would be no necessity, or justification, for quotations over a 20-year period.

The issue in Mr. Springer's complaint could be distinguished only if it is contended that the Air Force has no right under law to ask for optional flying hours in airlift contracts. I doubt very much that such contention would prevail in any forum of adjudication.

This I will say -- that the bid forms in both cases could have stated the basis of bid evaluation more clearly, and I intend to advise the Department of Defense authorities to improve their bid formats.

Air America is an ineligible bidder and therefore nonresponsive.

Our information is that Air America is registered with the Civil Aeronautics Board as a Part 45 carrier and in that capacity is entitled to bid on military airlift contracts without or outside the United States and its Territories and possessions.

The contracting officer did not have the authority to negotiate under the scope of this RFP.

This was a negotiated rather than a formally advertised bid. The authority cited for negotiation is a provision of the Armed Services Procurement Act codified as Title 10, U. S. Code, section 2304(a)(6). This provision permits negotiation for purchase of any property or services to be procured and used outside the United States, its Territories and possessions.

Since the airlift services to be performed are generally in the Far East and Western Pacific, the contracting officer had the option, by law, to negotiate, aside from the wisdom of this procedure as opposed to formal advertising in any given case. Mr. Springer's interpretation of this point seems rather strained.

The contracting procedure was in direct conflict with Air Force procurement policy to give preference to American carriers on close bids.

Air America is not a foreign carrier, according to our information. The predecessor company, CAT (Civil Air Transport) Inc., was incorporated in Delaware in 1950, and operated by the late Claire L. Chenault and Whitting Willauer. The name was changed to Air America, Inc. by charter amendment in March 1959.

The company has an Al Dun and Bradstreet rating as a wholly-owned subsidiary of The Pacific Corporation, Washington, D. C.

As you are aware, the chairman of the board of directors of the company is retired Vice Admiral Felix B. Stump, who took that position in January 1959.

We have no evidence that the company is under foreign control. It is true, according to our information, that Air America owns a foreign subsidiary, Asiatic Aeronautical Co., Ltd., a Formosa corporation chartered in 1955. The

latter company performs repair and maintenance services for associated and other concerns and for the U. S. Air Force. It is reported that the Formosa concern owns aircraft which, presumably, are available for lease.

Flight personnel with captain's rank are not rated pilots and flight equipment fails to meet licensing and safety requirements.

The Air Force advises us that all Air America pilots of captain's rank are rated and that the company and its predecessor have an outstanding safety record, experiencing no accidents causing injuries or fatalities in the past nine years.

Other bidders were discouraged and there were irregularities in bid handling and procedures.

The Air Force states that nine bidders were in fact solicited and has listed these names for us. Only one responded. Mr. Springer's company was not solicited originally on the grounds that the bidders' list would be limited to companies having offices in the Far East theater.

The contracting officer emphatically denies that he made improper disclosure of bid prices in the course of negotiating, and we have no ready means of checking this point. Mr. Springer does not explicitly allege fraud and collusion but suggests the opportunity was there. To avoid such circumstances, the contracting officer will be advised in the future to request bid submissions for the same opening date.

The fact that Air America's second bid shaved Arctic Pacific's bid uniformly down the line by 1 or 2 percent is cited by Mr. Springer as a suspicious circumstance. We note, however, that Arctic Pacific's second bid also shaved Air America's first bid by about the same percentage.

Absent any concrete evidence of fraud or collusion, the award to Air America does not appear to be improper. The contracting officer certainly was entitled to request a second proposal from both bidders, and it turned out that a substantial price reduction of $248,000 for the total quantity of flying hours was effected. Furthermore, in view of the fact that one bidder was lower initially on the basic flying hours and another was lower on the [illegible], including

options, at least the contracting officer was entitled to raise a question in his own mind which might well be resolved by request for resubmission of bids.

Conceivably, if this procurement had been formally advertised, more rigorous procedural standards would be applicable. The Comptroller General said in the aforementioned fuel storage case:

> . . . when negotiation is authorized . . . the extent and method of negotiation is left entirely to the administrative agency, and the rules of formally advertised competitive bidding are not applicable.

Fair play is called for in any case, but the circumstances here, measured against applicable laws and regulations, do not seem to afford any substantial grounds for complaint.

I hope this will be helpful to you.

Sincerely yours,

Chet Holifield, Chairman
Military Operations Subcommittee

Enclosures